

RESOLUTION NO. 92-168

=====

APPROVE EXECUTION OF THE AGREEMENT
FOR RENEWAL OF THE ELECTRIC SUPPLY CONTRACT WITH
WESTERN AREA POWER ADMINISTRATION

=====

WHEREAS, Western Area Power Administration (Western) is a power marketing agency within the Department of Energy which controls and administers all Central Valley Project power transactions including sale of power and energy to the City of Lodi pursuant to Contract No. DE-MS65-82WP59015, dated February 24, 1982, as amended or supplemented; and

WHEREAS, Contract No. DE-MS65-82WP59015 is subject to termination June 30, 1994 unless renewed in appropriate manner; and

WHEREAS, Western has submitted an Agreement for Renewal of the Electric Supply Contract (Agreement) pursuant to a Federal Register Notice which provides for renewal of existing Western allocations in like amounts to existing customers through 2004; and

WHEREAS, this Agreement for renewal shall become effective on the date of execution and, subject to prior termination as provided therein, shall remain in effect until midnight of December 31, 2004; and

WHEREAS, Contract No. DE-MS65-82WP59015, dated February 24, 1982, between the City of Lodi and Western, as amended or supplemented, shall terminate upon the effective date of this Agreement; and

WHEREAS, approval of the Agreement of renewal will ensure proper execution of the necessary documents to assure continued access by the City to this valuable, low-cost source of power and energy.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes renewal of the Contract for Electric Service between the City of Lodi and Western pursuant to the Agreement.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the Agreement.

Dated: October 7, 1992

=====

I hereby certify that Resolution No. 92-168 was passed and adopted by the Lodi City Council in a regular meeting held October 7, 1992 by the following vote:

Ayes: Council Members - Hinchman, Pennino, Sieglock,
Snider and Pinkerton (Mayor)

Noes: Council Members - None

Absent: Council Members - Non

Alice M. Reimche
Alice M. Reimche
City Clerk

by jmf

92-168

RES92168/TXTA.02J

Contract No. 92-SAO-20056

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
CENTRAL VALLEY PROJECT, CALIFORNIA

CONTRACT FOR ELECTRIC SERVICE TO

CITY OF LODI

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WESTERN AREA POWER ADMINISTRATION
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CONTRACT FOR ELECTRIC SERVICE TO THE
CITY OF LODI

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UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
CENTRAL VALLEY PROJECT, CALIFORNIA

CONTRACT FOR ELECTRIC SERVICE TO

CITY OF LODI

1. **PREAMBLE:** This Contract is made this 7th day of October, 1992, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); August 12, 1955, (69 Stat. 719); October 23, 1962, (76 Stat. 1173); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA (United States), acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called Western, represented by the officer executing this Contract, or a duly appointed successor, hereinafter called the Contracting Officer; and the CITY OF LODI, a municipal corporation, organized and existing under the laws of the State of California, hereinafter called the Contractor or Lodi, its successors and assigns; each sometimes hereinafter individually called the Party, and both sometimes hereinafter collectively called the Parties.

2. **EXPLANATORY RECITALS:**

2.1 Western operates an electric power system including transmission facilities as a part of the Central Valley Project (CVP) and Western owns, and has entitlements to, portions of the Pacific Northwest-Pacific

1 Southwest AC Intertie and the California-Oregon Transmission Project
2 (COTP).
3

4 2.2 The Contractor operates an electric power distribution system
5 hereinafter referred to as the Contractor's system.
6

7 2.3 Western has entered into Contract No. 14-06-200-2948A
8 (Contract 2948A) dated July 31, 1967, as amended, with Pacific Gas and
9 Electric Company (PG&E), which provides for certain firming services for
10 Western's preference customers and said Contract 2958A provides for,
11 among other things, a license to Western to furnish electric power to
12 the Contractor over the transmission system of PG&E.
13

14 2.4 Withdrawal of Power may be necessary to meet preference customer
15 requirements in Trinity, Tuolumne, and Calaveras Counties, California;
16 to meet project use requirements of the CVP including those of the
17 Federal San Luis Unit; for load-level limitations; for increased use of
18 Power by Westland Water District; and due to termination of Contract
19 2948A.
20

21 2.5 Western, in its settlement of the lawsuit entitled The City of
22 Santa Clara v. Andrus, has had electric power made available to serve
23 the Contractor according to the terms of the Memorandum of Understanding
24 dated February 8, 1980, between the parties to said lawsuit, hereinafter
25 referred to as the Memorandum of Understanding.
26

1 2.6 Under Appendix E (Letter Agreement Real-Time Scheduling) dated
2 July 22, 1983, as supplemented, of the Northern California Power Agency-
3 Pacific Gas and Electric Company Interconnection Agreement dated
4 November 26, 1991, Western and the Northern California Power Agency
5 (NCPA) have developed procedures to schedule the Contractor's CVP Power
6 on a real-time basis.

7
8 2.7 Western and the Contractor have agreed that the Contractor will
9 continue to receive 0.600 MW of additional CRD through June 30, 1994,
10 pursuant to the settlement agreement set forth in Amendment No. 3 to
11 Contract No. DE-MS65-82WP59015 between Western and the Contractor.

12
13 2.8 Western has arranged for the purchase of power from various
14 suppliers to supplement CVP generation to meet Western's obligations to
15 its customers, including the Contractor, and may enter into other
16 similar agreements in the future.

17
18 3. AGREEMENT:

19 The Parties agree to the terms and conditions set forth herein.
20

21 4. TERMINATION OF EXISTING CONTRACT:

22 Contract No. DE-MS65-82WP59015, dated February 24, 1982, between the
23 Contractor and Western, as amended or supplemented, shall terminate upon the
24 effective date of this Contract.
25
26

1 5. TERM OF CONTRACT:

2 This Contract shall become effective on the date of execution and, subject to
3 prior termination as otherwise provided for herein, shall remain in effect
4 until midnight of December 31, 2004.

5
6 6. DEFINITION OF TERMS:

7 As used herein, the following terms have the following meanings when used with
8 initial capitalization, whether singular or plural:

9
10 6.1 "Associated Energy" means that energy supplied at the Contractor's
11 system load factor or as supplied under the terms and conditions of any
12 applicable scheduling agreement.

13
14 6.2 "Contract Rate of Delivery" (CRD) means that amount of CVP
15 capacity Western has contractually obligated to the Contractor, which
16 may be increased or decreased pursuant to the terms and conditions of
17 this Contract.

18
19 6.3 "Final Withdrawal Procedures" means the procedures for withdrawing
20 the Contractor's CRD adopted pursuant to rulemaking proceedings and
21 outlined in the "Sacramento Area Office; Central Valley Project; Final
22 Withdrawal Procedures; Notice" published in the Federal Register dated
23 March 5, 1986, (51 FR 7702) as they may be amended or superseded.

24
25
26

1 6.4 "Fiscal Year" means each period during the term of this Contract
2 beginning at 0000 hour on October 1 and ending at 2400 hours on the
3 following September 30.
4

5 6.5 "Long-Term Firm Power" means firm power allocated by Western and
6 subject to withdrawal pursuant to the terms and conditions specified in
7 this Contract.
8

9 6.6 "Power" means capacity and Associated Energy.
10

11 6.7 "Westlands Withdrawable Power" means Long-Term Firm Power which is
12 withdrawable to meet the load requirements of Westlands Water District
13 pursuant to the terms and conditions of this Contract and as specified
14 in the Final Withdrawal Procedures.
15

16 7. ELECTRIC SERVICE TO BE FURNISHED:

17 7.1 Western, under the terms and conditions stipulated herein, will
18 furnish, deliver, and measure Power to the Contractor under the delivery
19 conditions and at the point(s) and voltage(s) specified in Exhibit C.
20 Said electric service will be furnished over Western's facilities or
21 facilities of PG&E under the terms and conditions provided in Contract
22 2948A, as amended, supplemented, or superseded, or under the terms and
23 conditions of transmission contracts arranged by the Contractor. In the
24 event PG&E refuses to serve the Contractor on or after the date of
25 initial service under the terms of Contract 2948A or such supplemental
26 wheeling or other contracts as may be necessary, the Contractor hereby

1 | relieves Western of any obligation to provide electric service hereunder
2 | and any liability for failing to provide such electric service; and
3 | Western hereby relieves the Contractor of its obligations hereunder. If
4 | the period of time which PG&E may legally refuse such service is
5 | determined by a final order of a court or regulatory agency having
6 | jurisdiction, then the Parties are so relieved under this section only
7 | for that period of time. The Parties recognize that if Contract 2948A
8 | is terminated, Western may not have the ability to provide the same
9 | services or level of service or provide services at the same or similar
10 | rates as are specified in this Contract. Western agrees to make good
11 | faith efforts, as determined by Western, to continue to provide power
12 | and services in the same amounts as specified in this Contract in the
13 | event that Contract 2948A is terminated. Subject to the determinations
14 | in Exhibit B, Power will be delivered in amounts which the Contractor
15 | may from time to time require up to the CRD. The CRD shall be specified
16 | in Exhibit A herein.

17 |
18 | 7.2 Western and the Contractor agree and understand that Western will
19 | deliver an additional CRD of 0.600 MW to the Contractor through June 30,
20 | 1994, as provided in the settlement agreement set forth in Amendment
21 | No. 3 to Contract No. DE-MS65-82WP59015 between Western and the
22 | Contractor. The additional CRD shall be set forth in Exhibit A and
23 | shall be subject to the provisions of this Contract.

24 |
25 | 7.3 At times, the power requirements under this and similar agreements
26 | of Western with other preference customers for electric service will be

1 in excess of the Power available from the CVP powerplants. Such
2 requirements will be supplied by Western through purchases and in
3 accordance with Contract 2948A, up to such amounts as are required to
4 bring the Power deliveries under said preference customer contracts in
5 any month or year up to the respective maximum amounts of firming Power
6 that PG&E is obligated to supply pursuant to Contract 2948A. Western
7 shall not be obligated to furnish Power hereunder in amounts which,
8 together with amounts to be furnished under other preference customer
9 contracts, are in excess of the limitations stipulated in
10 Contract 2948A.
11

12 8. **WITHDRAWAL PROVISIONS:**

13 8.1 The Parties agree and understand that withdrawal of Power may be
14 necessary to meet preference customer requirements in the Trinity,
15 Tuolumne, and Calaveras Counties, California, in accordance with the
16 requirements of Reclamation Law, and pursuant to the Final Withdrawal
17 Procedures. In order to supply Power to the above-mentioned preference
18 customers, Western, upon a minimum of 90 days advance written notice to
19 the Contractor, may withdraw all or a part of the Contractor's CRD as
20 specified in Exhibit A herein.
21

22 8.2 The Parties agree and understand that withdrawal of Power may be
23 necessary to meet project use requirements of the CVP, including
24 operation of the Federal San Luis Unit. In order to meet project use
25 requirements of the CVP, Western, upon a minimum of 90 days advance
26

1 written notice to the Contractor, may withdraw all or part of the
2 Contractor's CRD as specified in Exhibit A.
3

4 8.3 Availability of Power to Western in an amount adequate to meet the
5 Contractor's CRD under this Contract is dependent upon provisions under
6 Contract 2948A. Western may withdraw all or part of the Contractor's
7 CRD hereunder to maintain load limitations specified in Contract 2948A
8 pursuant to the Final Withdrawal Procedures. Western may also withdraw
9 all or part of the Contractor's CRD hereunder effective on the
10 termination of Contract 2948A. Western shall give written notice of the
11 withdrawal of CRD to the Contractor 90 days in advance of the effective
12 date of the withdrawal. Upon receipt of notice of withdrawal of the
13 Contractor's CRD pursuant to this section, the Contractor may terminate
14 this Contract by giving written notice of termination to Western within
15 30 days after receipt of such withdrawal notice, but not thereafter.
16

17 8.4 The Parties agree and understand that Westlands Withdrawable Power
18 may be withdrawn pursuant to the Final Withdrawal Procedures. In order
19 to supply Westlands Withdrawable Power requirements, Western may, upon
20 90 days advance written notice, reduce the Contractor's then-effective
21 CRD in accordance with the Final Withdrawal Procedures; Provided,
22 however, that accumulated reductions in such CRD shall not exceed that
23 portion attributable to Westlands Withdrawable Power as specified in
24 Exhibit A.
25
26

1 9. RESALE OF ELECTRIC SERVICE:

2 9.1 The Contractor understands and agrees that, upon execution of this
3 Contract:

4
5 9.1.1 The benefits of Federal power shall be made available to
6 its consumers at rates that are established at the lowest possible
7 level, consistent with sound business principles, in an open and
8 public manner, and the Contractor will so demonstrate to Western
9 upon request.

10
11 9.1.2 Consumers receiving the benefits of Federal power will be
12 supplied with information such that they can separately identify
13 the composite energy and capacity costs, stated in mills per kWh,
14 of Federal power and non-Federal power.

15
16 9.2 The Contractor may demonstrate compliance with this Resale Section
17 by making available to its customers by February 1 of each year, a
18 statement which separately identifies the Contractor's unit costs for
19 Federal power and for non-Federal power, and the magnitude and type of
20 other costs charged to the Contractor's customers during the previous
21 year. The Contractor may make this information available to its
22 customers by including the informational statement with the customer's
23 power bill, by publishing the information in a newspaper of general
24 circulation in the area served by the Contractor, or by any other method
25 mutually agreed upon between Western and the Contractor. A copy of each
26 statement shall also be provided to Western. Upon request the

1 Contractor will provide the supporting information for its statement to
2 Western.

3
4 9.3 The Contractor will furnish to Western, for the information of the
5 United States, a copy of each schedule of resale rates in effect on the
6 date of execution of this Contract and, upon adoption, a copy of each
7 schedule of rates thereafter adopted.

8
9 9.4 The Contractor will, to the extent that different rules are not
10 prescribed by State laws or by State or Federal agencies, maintain
11 proper books of account in accordance with the Uniform System of
12 Accounts prescribed for public utilities and licensees by the Federal
13 Energy Regulatory Commission.

14
15 9.5 Failure to comply with the provisions of this Resale Section may
16 result in the loss of all or a part of the resources committed to the
17 Contractor under this Contract, as conclusively determined by Western's
18 Administrator. The Contractor will be given written notice of
19 noncompliance with this Resale Section and will be given opportunity to
20 comment prior to any final action by Western.

21
22 10. AUXILIARY POWER SERVICE:

23 10.1 Notwithstanding any provision of the exhibits attached hereto, the
24 Contractor may satisfy its Power needs, which are in excess of its CRD,
25 from other sources; Provided, That such auxiliary power service shall be
26

1 in accordance with the terms and procedures specified in this section
2 and as may be specified in Exhibit B.
3

4 10.2 Prior to the utilization of any such auxiliary power service or
5 supply, the Contractor shall enter into an operating agreement with
6 Western defining the procedures by which the amount of Power supplied by
7 Western will be determined. The Contractor assumes all responsibility
8 for obtaining such auxiliary power supply as the Contractor determines
9 to be necessary to its operations.
10

11 **11. ENERGY MANAGEMENT PROGRAM:**

12 11.1 The Contractor shall have an on-going energy management program in
13 accordance with requirements published by Western in the Federal
14 Register following an appropriate public process, or any subsequent
15 amendments thereto.
16

17 11.2 The Contractor shall develop an energy management program suitable
18 for its own size, type, resource needs, and geographic area. Submittal,
19 approval, review, verification, and reporting regarding the energy
20 management program shall take place in accordance with requirements
21 published by Western in the Federal Register.
22

23 11.3 Failure to comply with Western's energy management program will
24 result in penalties as specified in the published program requirements.
25
26

1 11.4 If requested, and if within its capabilities, Western will provide
2 guidance and assistance for an energy management program.
3

4 12. SCHEDULE OF RATES:

5 12.1 The Contractor shall pay for the electric service furnished
6 hereunder in accordance with the rates, charges, and conditions set out
7 in the Schedule for Rates for Commercial Firm Power Service (CV-F6),
8 attached hereto and made a part hereof. Such rate schedule may be
9 modified from time to time in accordance with the General Power Contract
10 Provisions (GPCP) which are attached hereto and made a part hereof.
11

12 12.2 The Contractor shall pay for the transmission service furnished
13 hereunder in accordance with rates, charges, and conditions set out in
14 the Schedule of Rates for Third Party Transmission (CV-TPT2), attached
15 hereto and made a part hereof. Said rate schedule may be modified from
16 time to time in accordance with the GPCP which are attached hereto and
17 made a part hereof.
18

19 13. POWER AND ENERGY DELIVERIES:

20 All deliveries of Power by Western to the Contractor shall be in accordance
21 with procedures set forth in the Contract for Scheduling Service To The
22 Northern California Power Agency Contract No. DE-M065-85WP59098 (NCPA
23 Contract), as it may be modified or superseded by mutual agreement. For the
24 purpose of this Contract, NCPA shall be the duly authorized scheduling agent
25 for the Contractor. If the NCPA Contract is terminated, deliveries of Power
26

1 shall be billed in accordance with Exhibit B on an estimated basis until such
2 time that arrangements to bill on metered quantities can be instituted.

3
4 14. **ENFORCEABILITY:**

5 It is not the intent of the Parties that this Contract confer any rights on
6 third parties to enforce the provisions of the Contract. This Contract can
7 only be enforced by Western or the Contractor, or their successors or
8 assigns.

9
10 15. **GENERAL POWER CONTRACT PROVISIONS:**

11 The General Power Contract Provisions, effective January 3, 1989, attached
12 hereto, are hereby made a part of this Contract, the same as if they had been
13 expressly set forth herein.

14
15 16. **EXHIBITS MADE PART OF CONTRACT:**

16 Inasmuch as the Contract Rate of Delivery, Operating Agreement, and Delivery
17 Conditions existing under this Contract may vary during the term hereof, they
18 will be set forth in Exhibits A, B, and C, respectively. Each of said
19 exhibits shall become a part of this Contract during the term fixed by its
20 provisions. Exhibits A, B, and C are attached hereto, and each shall be in
21 force and effect in accordance with its terms until respectively superseded by
22 a subsequent exhibit.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: _____

Title: Area Manager

Address: 1825 Bell Street, Suite 105

Sacramento, California 95825

(Seal)

CITY OF LODI

By: Gary L. Olson for

Thomas A. Peterson

Title: City Manager

Address: P.O. Box 3006

Lodi, CA 95241-1910

Approved as to form:

BW McHaff

Bobby W. McNatt

City Attorney

Contract No. 92-SAO-20056

R E S O L U T I O N NO. _____

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF

_____:

The _____ is authorized, on behalf of the
_____, to execute this Contract with Western Area
Power Administration titled Contract No. 92-SAO-20056.

Adopted: _____

EXHIBIT A
(Contract Rate of Delivery)

1. This Exhibit A, made this _____ day of _____, 19____, to be effective under and as a part of Contract No. 92-SAO-20056, dated _____, 19____, (hereinafter called the Contract), shall become effective on the date of execution of the Contract, and shall remain in effect until superseded by another Exhibit A; Provided, That this Exhibit A or any superseding Exhibit A shall be terminated by the termination of the Contract.

2.

2.1 On or after the effective date of this Exhibit A through June 30, 1994, the Contract Rate of Delivery shall be 13.836 MW of Long-Term Firm Power, which includes 0.600 MW of additional CRD as provided in Subsection 7.2 of this Contract and 8.063 MW of Westlands Withdrawable Power.

2.2 Beginning on July 1, 1994, the Contract Rate of Delivery shall be 13.236 MW of Long-Term Firm Power, which includes 8.063 MW of Westlands Withdrawable Power.

3. The original allocation referred to in the Final 1994 Power Marketing Plan, Central Valley Project, California, as published in the Federal Register on or about October 5, 1992, shall be 13.236 MW of Long-Term Firm Power, which includes 1.751 MW of Westlands Withdrawable Power.

EXHIBIT B
(Operating Agreement Including Quantitative Determinations)

1. This Exhibit B, made this _____ day of _____, 19_____, to be effective under and as a part of Contract No. 92-SAO-20056, dated _____, 19_____, (hereinafter called the Contract), shall become effective on date of execution of the Contract, and shall remain in effect until superseded by another Exhibit B; Provided, That;

- a. This Exhibit B or any superseding Exhibit B shall be terminated by the termination of the Contract.
- b. Section I of this Exhibit B shall terminate upon the termination of Contract No. DE-M065-85WP59098 between Western and the Northern California Power Agency (NCPA). Upon the date of termination of said Contract, Section II of this Exhibit B shall become effective and binding until a new Exhibit B is executed.
- c. It is recognized that the Contractor may desire to change its electric service arrangements from time to time and that appropriate modifications may be required in this Exhibit B. Accordingly, the Parties will consider a revision to the exhibit if and when the Contractor desires to change its arrangements. Western reserves specifically the right to terminate this Exhibit B and require the substitution of a new exhibit in the event that the electric service arrangements of the Contractor are altered so that this exhibit no longer is in accordance with the altered arrangements or the principles set forth in the Contract.

Contractor's System Requirements

2. The System Definitions and Billing Determinations set forth in this Operating Agreement are based upon the understanding of the Parties that the Contractor's electric service arrangements are such that its system requirements are being supplied from the following sources only:

- a. Firm power service from Western.
- b. Additional power service from other suppliers.
- c. Power service from the Contractor's own sources.

SECTION I

System Definitions - Scheduling Service

3.
 - a. The maximum demand for billing purposes shall be the maximum scheduled half hour delivery of energy to the Contractor by NCPA during the billing period, not to exceed the Contract Rate of Delivery as set forth in Exhibit A, and adjusted in accordance with Rate Schedule CV-TPT2, or its successor.
 - b. The total energy for billing purposes shall be the absolute half hour sum of the amounts of energy scheduled to the Contractor by NCPA during the billing period, adjusted in accordance with Rate Schedule CV-TPT2, or its successor.

Billing Determinations - Scheduling Service

4.
 - a. The Contractor shall pay for all power and energy scheduled hereunder to its system during such period at the rates provided for in Section 12 of this Contract.
 - b. The billing period shall be from 0000 on the first day of the month to 2400 on the last day of the month. The schedules of half-hourly energy to the Contractor by NCPA shall be based upon data provided to the Contracting Officer prior to the fifth working day each month. NCPA shall provide Western with a complete half-hourly breakdown of its past month's schedules showing deliveries of Power from Western to the Contractor.

SECTION II

(To be implemented if Contract No. DE-M065-85WP59098 is terminated without a successor agreement.)

System Definitions - Metered Service

5.
 - a. The Contractor's System Demand for any billing period shall be the sum, for the 30-minute interval in which the sum is largest, of the 30-minute integrated demands established during the billing period at the point(s) of delivery as measured and adjusted if necessary in accordance with Exhibit C, and of the 30-minute integrated demands established during the billing period at any point(s) of delivery at other than those where Western makes deliveries.

b. The Contractor's System Energy Requirements for any billing period shall be the sum total of energy delivered during the billing period at the point(s) of delivery, as measured and adjusted if necessary in accordance with Exhibit C, and at the point(s) of delivery at other than those where Western makes deliveries.

Billing Determinations - Metered Service

6. a. The billing demand and energy billed for power service in any billing period in which the Contractor's System Demand is equal to or less than the Contract Rate of Delivery as set forth in Exhibit A, the Contractor shall pay for all capacity and energy delivered hereunder to its system during such period at the rates provided for in Section 12 of the Contract.
- b. (1) The billing demand for firm power service in any billing period in which the Contractor's System Demand is larger than the Contract Rate of Delivery as set forth in Exhibit A, the Contractor shall pay for electric service at the rate provided for in Section 12 of the Contract using the effective Contract Rate of Delivery set forth in Exhibit A, as the billing demand.
- (2) The energy billed for firm power service in any billing period in which the Contractor's Demand is larger than the Contract Rate of Delivery as set forth in Exhibit A, shall be determined by the following formula:

$$\text{Energy Billed} = \frac{A}{B} \times C$$

- Where:
- A = The maximum Contract Rate of Delivery for firm power service as established by Exhibit A of the Contract.
- B = Contractor's System Demand as determined pursuant to Paragraph 5a, Section II.
- C = Contractor's System Energy Requirements as determined pursuant to Paragraph 5b, Section II.

EXHIBIT C
(Transmission, Delivery and Measurement Conditions)

1. This Exhibit C, made this _____ day of _____, 19_____, to be effective under and as a part of Contract No. 92-SAO-20056, dated _____, 19_____, (hereinafter called the Contract), shall become effective on the date of execution of the Contract, and shall remain in effect until superseded by another Exhibit C; Provided, That;

- a. This Exhibit C or any superseding Exhibit C shall be terminated by the termination of the Contract; and
- b. The Contracting Officer reserves the right to terminate this Exhibit C and require the substitution of a new exhibit at such time as new delivery points or conditions may be established for additional electric service.

Point of Delivery

2. The Contracting Officer, under terms and conditions stipulated in the Contract will furnish electric service to the Contractor, from and after the date of initial service as defined in the Contract at the points at which the 60-kV circuits of the Contractor are attached to the 60-kV circuits of the Pacific Gas and Electric Company at or near the City of Lodi, California.
3. Capacity and energy furnished hereunder will be delivered to the Contractor at a nominal delivery voltage of 60 kV.

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Central Valley Project, California

SCHEDULE FOR RATES FOR COMMERCIAL FIRM POWER SERVICE

Effective:

May 1, 1988.

Available:

In the area served by the Central Valley Project (CVP).

Applicable:

To commercial firm power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service:

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

Demand Charge: The rates listed below shall be the charge per kilowatt of billing demand. The billing demand is the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

<u>Effective Dates</u>	<u>Demand Rate</u>
May 1, 1988, through September 30, 1989	\$6.86 per kilowatt-month
October 1, 1989, through September 30, 1991	\$7.49 per kilowatt-month
October 1, 1991, through April 30, 1993	\$7.74 per kilowatt-month

Energy Charge: For all energy use up to, but not in excess of, the maximum kilowatthour obligation of the United States during the month as established under the power sales contract, the rates shall be:

<u>Effective Dates</u>	<u>Energy Rate</u>
May 1, 1988, through September 30, 1989	14.43 mills per kWh
October 1, 1989, through September 30, 1991	15.76 mills per kWh
October 1, 1991, through April 30, 1993	16.30 mills per kWh

Billing for Unauthorized Overruns:

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above.

Transformer Loss Adjustment:

If delivery is made at transmission voltage but metered on the low voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses, unless otherwise provided for by contract.

Power Factor Adjustment Clause:

- (a) A surcharge of 0.25 percent (0.0025) will be assessed against the total monthly capacity and energy charges at each Point of Delivery (POD), for each percent or major portion thereof (0.5 percent or greater), that a customer's power factor at such POD is below 95 percent lagging or 95 percent leading.
- (b) Power factor will be measured based on the average power factor recorded over the 30-minute interval in which the customer's maximum monthly peak demand at such POD occurs. In the event of multiple occurrences of the same maximum monthly peaks, the individual peak period with the worst power factor will be used for billing purposes.
- (c) This provision will not apply to points of measurement without continuous volt-amperes reactive metering.
- (d) The Contracting Officer may waive the power factor adjustment for good cause in whole or in part.
- (e) No power factor surcharges will be assessed prior to the billing month of June 1989 to allow CVP customers time to implement power factor improvement programs.

Revenue Adjustment Clause:

There are two components to the Revenue Adjustment Clause (RAC): the basic RAC provision and the Contract Dependable Capacity (CDC) charge adjustment provision.

(a) Basic RAC Provision.

- (i) By each November 1 and May 1, Western shall calculate net differences for the previous 6-month period (April 1 through September 30, and October 1 through March 31, respectively), between the estimated CVP power sales revenues and CVP purchased power expenses used to establish the CVP power rates, as compared to the actual incurred CVP power sales revenues and purchased power expenses. The net differences for each 6-month period shall be calculated based on the formula in subparagraph (a)(v). If the

net difference is a positive value, then it shall be credited to CVP commercial power customers. If the net difference is a negative value, then it shall be surcharged to the CVP commercial power customers.

- (ii) All credits or surcharges under this provision (a) shall occur over the 6-month period beginning 1 month after the period for which the net difference was calculated. The credit or surcharge shall be equally distributed over the 6 monthly billing periods and be specifically noted on each power billing statement.
- (iii) The net difference used as the basis for any surcharge or credit for a 6-month adjustment period shall not exceed the absolute value of \$15,000,000.
- (iv) The net surcharge or credit shall be allocated to each CVP commercial power customer based on the proportion that such customer's billed obligation to Western for CVP capacity and energy represented, compared to the total billed obligation for all CVP commercial power customers for CVP capacity and energy, in the period in which the net surcharge or credit was incurred.
- (v) The basic RAC adjustment provision formula is as follows:

$$(R \text{ act} - R \text{ est}) - (E \text{ act} - E \text{ est}) = \text{net surplus or deficit.}$$

Where:

R act = Actual Revenue received from sale of capacity and energy to CVP commercial power customers. This figure will be based on actual CVP preference customer invoices to the extent available and estimated bills otherwise.

R est = Estimated Revenue expected to be realized from capacity and energy sales to CVP preference customers. This figure is recorded in Table I.

E act = Actual purchased power obligations incurred by Western in support of CVP load level and surplus sales to the Pacific Gas and Electric Company (PG&E) bank accounts. This figure will be based on actual invoices to the extent available.

E est = Estimated purchased power expenses. This figure is recorded in Table I.

(b) CDC Capacity Charge Adjustment Provision.

- (i) For each megawatt for CDC credit received by Western pursuant to Western's "Sale, Interchange, and Transmission Contract No. 14-06-200-2948A" with PG&E, the CVP capacity charge component shall be reduced by the applicable incremental value shown on Table II.
- (ii) Similarly, for each megawatt of CDC credit rescinded or otherwise lost by Western, the CVP capacity charge shall be increased by the applicable incremental value shown on Table II.

- (vi) Effective May 1, 1992, the net surcharge or credit shall be allocated to each CVP commercial power customer only after the net revenue impact on repayment has been considered as follows:

October - March RAC Period (Before Annual PRS Completed):

- Scenario 1: If the RAC calculation results in a surcharge (RAC Surcharge), the RAC Surcharge would be allocated.
- Scenario 2: If the RAC calculation results in a credit (RAC Credit) and there is a deficit balance in the last annual power repayment study (Annual PRS), the RAC Credit would not be allocated.
- Scenario 3: If the RAC calculation results in a RAC Credit and there is not a deficit balance in the Annual PRS, the RAC Credit would be allocated.

April - September RAC Period (After Annual PRS Completed):

- Scenario 1: If the RAC calculation results in a RAC Surcharge and the actual net revenue from the Annual PRS is less than the sum of any deficit from the Annual PRS and projected net revenue in the 1988 Rate-Case Power Repayment Study (Rate PRS) (this figure is recorded in Table III), the RAC Surcharge would be allocated.
- Scenario 2: If the RAC calculation results in a RAC Surcharge and the actual net revenue from the Annual PRS is greater than the sum of any deficit in the Annual PRS and projected net revenue in the Rate PRS (this figure is recorded in Table III), the RAC Surcharge would not be allocated.
- Scenario 3: If the RAC calculation results in a RAC Credit and the actual net revenue from the Annual PRS is greater than the sum of the RAC Credit, any deficit in the Annual PRS and projected net revenue in the Rate PRS (this figure is recorded in Table III), the RAC Credit would be allocated.
- Scenario 4: If the RAC calculation results in a RAC Credit and the actual net revenue from the Annual PRS is less than the sum of the RAC Credit, any deficit in the Annual PRS and projected net revenue from the Rate PRS (this figure is recorded in Table III), the RAC Credit would not be allocated.

TABLE II

VALUE OF ONE MEGAWATT OF CAPACITY CREDIT TO CUSTOMERS

<u>FY</u>	<u>Time Period</u>	<u>Value of Capacity Credit (\$/kW-M)</u>	<u>Months of Period</u>	<u>MW Credit for Period \$</u>	<u>Capacity Sales During Period (kW-Mo)</u>	<u>Incremental¹ Adjustments to CVP Capacity Charge (\$/kW-Mo)</u>
88	May 88 - Sep 88	14.960	5	74,800	6,631,286	0.011280
89	Oct 88 - Mar 89	15.335	6	92,010	7,508,602	0.012254
89	Apr 89 - Sep 89	15.710	6	94,260	7,973,052	0.011822
90	Oct 89 - Mar 90	15.846	6	95,076	7,533,588	0.012620
90	Apr 90 - Sep 90	16.500	6	99,000	7,999,584	0.012376
91	Oct 90 - Mar 91	16.814	6	100,884	7,590,270	0.013291
91	Apr 91 - Sep 91	17.330	6	103,980	8,059,771	0.012901
92	Oct 91 - Mar 92	17.733	6	106,398	7,608,737	0.013984
92	Apr 92 - Sep 92	18.190	6	109,140	8,079,380	0.013508
93	Oct 92 - Mar 93	18.616	6	111,696	7,629,042	0.014641
93	Apr 93	19.100	<u>1</u>	<u>19,100</u>	<u>1,305,589</u>	<u>0.014629</u>
			60	1,006,344	77,918,901	0.012915

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Please note that once capacity credit is received, the capacity charge component must be adjusted at each time period indicated above to be consistent with the changing "Incremental Adjustment" values shown in the last column.

(c) RAC Tables

TABLE I

REVENUE AND EXPENSE TARGET LEVELS
FOR THE REVENUE ADJUSTMENT CLAUSE¹

<u>Fiscal Year</u>	<u>Months</u>	<u>Estimated Revenue² (\$)</u>	<u>Estimated Expense³ (\$)</u>
1988	May 88 - Sep 88	84,301,400	73,714,400
1989	Oct 88 - Mar 89	105,824,600	88,690,200
1989	Apr 89 - Sep 89	104,969,200	89,498,800
1990	Oct 89 - Mar 90	115,852,500	104,323,000
1990	Apr 90 - Sep 90	114,920,600	96,866,000
1991	Oct 90 - Mar 91	116,570,500	107,571,000
1991	Apr 91 - Sep 91	115,634,100	91,255,000
1992	Oct 91 - Mar 92	120,795,100	112,843,900
1992	Apr 92 - Sep 92	119,827,300	98,288,100
1993	Oct 92 - Mar 93	121,034,000	112,998,100
1993	Apr 93	20,462,300	14,066,000

¹ Please note that these figures will be adjusted to recognize any capacity rate adjustment implemented in response to Western's receipt or loss of CDC credits.

² Projected revenues are the estimated revenues Western will receive from the sale of capacity and energy to CVP preference customers.

³ Projected expenses consist of the following purchased power costs: the delivered costs of capacity and energy purchased from PG&E, Pacific Northwest, power imports, and in-state power purchases.

TABLE III

NET REVENUE AVAILABLE FOR REPAYMENT
TARGET LEVELS FOR THE REVENUE ADJUSTMENT CLAUSE

<u>Fiscal Year</u>	<u>(\$)</u>
1988	46,821,577
1989	10,829,623
1990	8,489,074
1991	11,436,600
1992	8,945,554
1993	10,026,150

Schedule CV-TPT2
(Supersedes Schedule CV-TPT1)

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Central Valley Project, California
RATE SCHEDULE FOR THIRD PARTY TRANSMISSION

Effective:

May 1, 1988.

Available:

In the area served by the Central Valley Project (CVP).

Applicable:

To customers of the CVP who require transmission service to receive power and energy sold by Western.

Character and Conditions of Service:

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Monthly Rate:

When the United States utilizes transmission facilities, other than its own, in providing service under a customer's power sales contract, and costs are incurred by the United States for the use of such facilities, the customer shall pay all costs, including transmission losses, incurred in the delivery of such power (including secondary and dump energy).

The transmission losses chargeable to the customer shall be those losses which are in excess of the "at or above 44-kV" transmission losses specified by Contract No. 14-06-200-2948A. For billing purposes, transmission losses will be added to the meter readings of the power and energy delivered to the customer under the customer's power sales contract with the United States.

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

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WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

I. APPLICABILITY.

1. Applicability.

1.1. These General Power Contract Provisions shall be a part of the contract to which they are attached. These provisions set forth general conditions applicable to the contract. Specific terms set forth in the contract have precedence over any provision herein.

1.2. If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with the General Power Contract Provisions, Articles 10, 17, 18, 33, 34, 41, 42, and 43.

II. DELIVERY OF SERVICE PROVISIONS.

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of the Contracting Officer. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by the Contracting Officer, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Article 31 herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are

necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1. The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western or by the Contractor acting as the designated representative of Western. The Contractor shall ensure that metering equipment furnished and maintained by the Contractor or another power supplier, as provided in the contract, meets the metering standards of Western if such metering equipment will be used for billing or other accounting purposes by Western.

6.2. Meters shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted, and representatives of the interested parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested at least once each year by the party responsible for meter maintenance and at any reasonable time upon request by either party hereto, a supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance. Meters found with broken seals shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Article 6.3 below.

6.3. Except as otherwise provided in Article 6.4 hereof, should any meter that is needed by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during such period of failure to register accurately, shall, for billing purposes, be estimated by the Contracting Officer from the best available information.

6.4. If acceptable inspections and tests of a meter needed by Western for billing or other accounting purposes disclose an error exceeding two percent (2%), then correction based upon the inaccuracy found shall be made of the records of services furnished during the period that such inaccuracy has existed as determined by the Contracting Officer; Provided, That if such period of inaccuracy cannot be determined, correction shall be made for the period beginning with the monthly billing period immediately preceding the billing period during which the test was made.

6.5. Any correction in billing resulting from correction in meter records shall normally be made in the next monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties hereto arising out of inaccuracy of metering equipment.

7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1. When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

* 8.2. Unless otherwise provided in the contract or attached rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3. Western will endeavor to inform the Contractor from time to time of any changes contemplated on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system because of changes or conditions on the system over which the service is supplied shall not be a charge against or a liability of Western.

8.4. If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days' written notice given to the Contracting Officer prior to making such changes, but not thereafter.

* Revised January 3, 1989.

8.5. If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days' written notice given to the Contracting Officer prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its loads served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by the Contracting Officer, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by the Contracting Officer, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or discontinue furnishing services to the Contractor if, after notice by the Contracting Officer, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by the Contracting Officer to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this article shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

III. RATES, BILLING, AND PAYMENT PROVISIONS.

11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to the Contracting Officer within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

13. Billing and Payment.

13.1. Western will issue bills to the Contractor for service furnished during the preceding month within ten (10) days after the end of the billing period.

13.2. If Western is unable to issue a timely monthly bill, it may elect to render an estimated bill for that month to be followed by the final bill. Such estimated bill shall be subject to the same payment provisions as a final bill.

13.3. Payments are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western; Provided, That payments received by mail will be accepted as timely and without assessment of the charge provided for in Article 14 if a United States Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4. Whenever the parties agree, payments due Western by the Contractor may be offset against payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. For services included in net billing procedures, payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1. Bills not paid in full by the Contractor by the due date specified in Article 13 hereof shall bear an initial charge of two percent (2%) of the amount unpaid. Each day thereafter, a charge of five hundredths percent (0.05%) of the principal sum unpaid shall be added until the amount due, including the two percent (2%) initial charge, is paid in full. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2. Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

For a fractional part of a billing period at the beginning or end of electric service, at the beginning or end of irrigation pumping service each year, a fractional billing period under a new rate schedule, and for fractional periods due to withdrawals of electric services, the demand or capacity charge and minimum charges shall each be proportionately adjusted in the ratio that the number of hours that electric service is available to the Contractor in such fractional billing period bears to the total number of hours in the billing period involved.

16. Adjustments for Curtailments to Firm Service.

16.1. Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of 1 hour or longer in duration each. Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Article 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this article, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2. The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, for each reduction, of: the number of hours of reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3. The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of 1 hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the provisions of this section; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

IV. POWER SALES PROVISIONS.

17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

18. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act of December 21, 1928, (45 Stat. 1057) and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

V. FACILITIES PROVISIONS.

19. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from the Contracting Officer. At least ninety (90) days, unless otherwise agreed, prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

20. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the worksite. Any materials or work that the Contracting Officer determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

21. As-Built Drawings.

Within a reasonable time, as determined by the Contracting Officer, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by the Contracting Officer. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by the Contracting Officer.

22. Equipment Ownership Markers.

22.1. The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

22.2. If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

23. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by the Contracting Officer, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

24. Changes to Western Control Facilities.

If at any time during the term of the contract, the Contracting Officer determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by the Contracting Officer, to be paid by the Contractor. The Contracting Officer shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, the Contracting Officer shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions of the contract and require the removal of the Contractor's facilities.

25. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

26. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

27. Construction and Safety Procedures.

* 27.1. The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Western's current "Power Systems Safety Manual," "Construction, Safety, and Health Standards," and "Power System Clearance Procedures" in effect upon the signing of the contract; Except, That, in lieu of the safety program required herein, the Contractor may provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

27.2. The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from the Contracting Officer.

27.3. At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

27.4. Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

* Revised January 3, 1989.

27.5. In the event the Contractor, its employees, agents, or subcontractors fail to comply with any provision of this article, or Article 20 (Inspection and Acceptance) herein, the Contracting Officer or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

VI. OTHER PROVISIONS.

* 28. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

29. Effect of Section Headings.

Section headings or article titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

30. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

31. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Article 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any

strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

32. Liability.

32.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractor's, its employees', agents', or subcontractors', construction, operation, maintenance, or replacement activities under the contract.

32.2 The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, as amended.

* 33. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, and removed subject to compliance with laws, executive orders, and regulations applicable to that party, including the National Environmental Policy Act of 1969, as amended, 36 CFR 800, and the Archeological Resources Protection Act of 1979.

34. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Articles 13 (Billing and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

* Revised January 3, 1989.

35. Transfer of Interest in Contract by Contractor.

No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the written approval of the Administrator of Western; Provided, That if the Contractor operates a project financed in whole or in part by the Rural Electrification Administration, the Contractor may transfer or assign its interest in the contract to the Rural Electrification Administration or any other department or agency of the Federal Government without such written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this article.

36. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

37. Notices.

Any notice, demand, or request required by the contract or the provisions of these articles to be in writing shall be considered properly given when delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram addressed to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice.

38. Contingent Upon Appropriations.

Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

39. Officials Not to Benefit.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of the contract or to any benefit that may have arisen from the contract, but this restriction shall not be construed to extend to the contract if made with a corporation or company for its general benefit.

40. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

• 41. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C.A. § 329 (1986), is subject to the provisions of the Act, 40 U.S.C.A. §§ 327-333 (1986), and to regulations promulgated by the Secretary of Labor pursuant to the Act.

* 42. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the contract.

43. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

* Revised January 3, 1989.